

These rules supercede the sick leave fund policy dated 5/15/92.

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2.21.801 SHORT TITLE (1) This policy may be cited as the sick leave fund policy. (History: Sec. 2-18-618, MCA; IMP, 2-18-618, MCA; NEW, 1986 MAR p. 1297, Eff. 8/1/86.)

2.21.802 POLICY AND OBJECTIVES (1) It is the policy of the state of Montana to allow the sharing of accrued sick leave between employees and the pooling of sick leave, consistent with these rules. Shared and pooled sick leave may then be available to a qualifying employee who suffers an extensive illness or accident.

(2) Nothing in this policy guarantees that an agency shall approve leave of absence and nothing in this policy guarantees direct grants or grants of sick leave from the sick leave fund.

(3) It is the objective of this policy to establish the structure of the sick leave fund, to establish eligibility requirements, and to establish procedures to administer both the sick leave fund and direct grants of sick leave.

(4) No funds shall be attached to any hours of sick leave which are:

- (a) donated to the sick leave fund;
- (b) received as grants from the sick leave fund, or
- (c) donated or received as direct grants. The agency employing the recipient of a grant from the sick leave fund or a direct grant of sick leave shall pay all costs of the use of that sick leave. (History: Sec. 2-18-618, MCA; IMP, 2-18-618, MCA; NEW, 1986 MAR p. 1297, Eff. 8/1/86.)

2.21.803 DEFINITIONS As used in this sub-chapter, the following definitions apply:

(1) "Agency" means all executive branch departments, those agencies allocated to the state board of education under

2-15-1511, MCA, all attached to boards, commissions and their staffs, the Montana university system and units of that system under the board of regents, the legislative branch and the judicial branch.

(2) "Contribution" means the number of hours of accrued personal sick leave which an employee must donate to the sick leave fund to become or to remain a participant in the fund.

(3) "Direct grant" means the extension to an employee, who may or may not be a participating employee, of up to 160 hours of sick leave in a 12-month period which is donated by other state employees, who may or may not be participating employees, for the specific use of the employee.

(4) "Employee" means an employee of the state of Montana, who is in an allocated FTE or who is on the faculty of the Montana university system and who is receiving sick leave.

(5) "Extensive illness or accident" means an illness, injury, disability, or quarantine which incapacitates the participating employee for 10 or more consecutive working days.

(6) "Grant" means the extension to a participating employee of sick leave from the sick leave fund.

(7) "Maximum allowable benefit" means no more than 160 hours of sick leave in any continuous 12-month period received as either grants from the sick leave fund or as direct grants.

(8) "Participating employee" means an employee of the state of Montana assigned to a position which has been designated as permanent or seasonal who has joined the sick leave fund by making the initial contribution of the number of hours required by these rules and who has contributed any hours subsequently requested by the department of administration.

(9) "State employee group benefits advisory council" means the council provided for in 2-15-1016, MCA, which advises the department of administration on the sick leave fund.

(10) "Sick leave fund" means a pool established to accumulate and disburse voluntarily and irrevocably contributed accrued personal sick leave from state employees for the purpose of providing sick leave to participating employees.

(11) "Sick leave voucher" means the form used to transmit sick leave credits as a direct grant from an employee to another employee, to the sick leave fund, or from the sick leave fund to a participating employee. (History: Sec. 2-18-618, MCA; IMP, 2-18-618, MCA; NEW, 1986 MAR p. 1297, Eff. 8/1/86; AMD, 1992 MAR p. 1005, Eff. 5/15/92.)

2.21.804 PROHIBITED USES OF SICK LEAVE FUND AND DIRECT GRANTS

(1) No sick leave accrued prior to July 1, 1971, may be contributed to the sick leave fund or provided as direct grants.

(2) An employee shall not receive direct grants of sick leave or a grant from the sick leave fund:

- (a) if the employee is eligible for workers' compensation benefits;
- (b) if the employee is no longer employed by the state;
- (c) while the employee is on long-term leave of absence without pay for a reason other than extensive illness or accident or during the one-year preference period following a reduction-in-work force. (History: Sec. 2-18-604 and 2-18-618, MCA; IMP, 2-18-618, MCA; NEW, 1986 MAR p. 1297, Eff. 8/1/86; AMD, 1987 MAR p. 1202, Eff. 7/31/87.)

Rules 5 through 9 reserved

2.21.810 STRUCTURE OF SICK LEAVE FUND (1) The sick leave fund shall be administered by the department of administration. There shall be one sick leave fund with the following exception: Upon the approval of the board of regents of higher education employees of the various units of the Montana university system may participate in either:

- (a) a university system sick leave fund plan; or
- (b) the sick leave fund administered by the department of administration.

(2) The state employee group benefits advisory council will review the operation of the sick leave fund and make recommendations to the director of the department of administration regarding the fund. (History: Sec. 2-18-618, MCA; IMP, 2-18-618, MCA; NEW, 1986 MAR p. 1297, Eff. 8/1/86; AMD, 1988 MAR p. 472, Eff. 3/11/88; AMD, 1992 MAR p. 1005, Eff. 5/15/92.)

2.21.811 ADMINISTRATION OF SICK LEAVE FUND (1) No grants from the sick leave fund shall be made unless the fund has a fund balance of 400 hours of sick leave.

(2) Sick leave credits shall be contributed to the sick leave fund using a sick leave voucher. The sick leave voucher and any other forms necessary to administer the sick leave fund shall be prescribed by the department of administration.

(3) Where an employee makes an initial contribution to the sick leave fund, the sick leave voucher shall be transmitted from the employing agency to the department of administration.

(4) To request a grant of sick leave from the sick leave fund, the participating employee shall obtain a voucher from the employing agency.

(5) The employing agency shall certify that:

- (a) the employee meets all eligibility requirements in ARM 2.21.814 to receive a grant from the sick leave fund;
- (b) the agency head or designee has approved the receipt of sick leave; and

(c) the supervisor has approved the leave of absence.

(6) The agency shall transmit the voucher to the department of administration. The department of administration shall certify that the requested sick leave credits are

available from the sick leave fund and shall return the voucher to the employing agency. The employing agency shall credit the sick leave credits to the employee's account. (History: Sec. 2-18-618, MCA; IMP, 2-18-618, MCA; NEW, 1986 MAR p. 1297, Eff. 8/1/86.)

2.21.812 MEMBERSHIP IN SICK LEAVE FUND (1) Any full-time or part-time seasonal or permanent employee of the executive, legislative or judicial branches of state government or of the Montana university system may become a participating employee in the sick leave fund.

(2) To enroll in the sick leave fund, an employee must:

(a) have completed the 90-day qualifying period to take sick leave, provided for in 2-18-618, MCA;

(b) contribute at least 8 hours of accrued sick leave to the sick leave fund. The initial contribution for part-time employees shall be prorated.

(c) have a minimum balance of 40 hours of sick leave remaining in the employee's account following the contribution. The minimum balance for a part-time employee shall be prorated.

(3) An employee may contribute a combined total of no more than 40 hours of sick leave either to the sick leave fund or as direct grants in a 12-month period. The 12-month period is calculated from the first day the employee contributes to the fund or makes a direct grant. An employee may exceed the 40-hour limit in order to make an additional contribution requested by the department of administration to maintain a minimum balance in the fund. At the time of termination, there is no limit on the amount of sick leave an employee may contribute to the fund.

(4) An employee meeting the requirements in this rule may enroll in the sick leave fund at any time.

(5) All contributions to the sick leave fund shall be voluntary and irrevocable.

(6) Participation in the fund constitutes the employee's agreement to abide by all rules related to the sick leave fund promulgated by the department of administration.

(7) An employee remains a member of the sick leave fund unless or until the employee:

(a) fails to authorize an additional contribution;

(b) terminates employment with state government; or

(c) resigns in writing from the fund at any time.

(History: Sec. 2-18-604 and 2-18-618, MCA; IMP, 2-18-618, MCA; NEW, 1986 MAR p. 1297, Eff. 8/1/86; AMD, 1987 MAR p. 1202, Eff. 7/31/87; AMD, 1999 MAR p. 53, Eff. 1/15/99.)

2.21.813 CONTRIBUTIONS (1) The initial contribution required from a full-time employee to become a member of the sick leave fund shall be 8 hours of accrued personal sick leave. The contribution from a part-time employee shall be prorated.

(2) To maintain a minimum balance in the sick leave fund, it may become necessary for the department of administration to request additional contributions of 8 hours of sick leave from participating employees. The additional contribution for a part-time employee shall be prorated.

(3) Participating employees shall authorize the additional contribution within 45 days, except as provided in paragraph (5). If an employee fails to authorize the additional contribution, the employee's membership in the sick leave fund shall be terminated.

(4) The employee shall be eligible to rejoin the fund at a later time. An employee who rejoins the sick leave fund shall meet all initial membership requirements provided in ARM 2.21.812 and must wait 90 days from the date the employee rejoins the fund to be eligible to receive a grant from the fund.

(5) A participating employee who is in the process of exhausting or who has exhausted all sick leave as the result of an extensive illness or accident at the time a request for additional contributions is made shall not be required to make the contribution. An exception must be approved by the agency head or designee and submitted to the department of administration within 45 days of the original request. (History: Sec. 2-18-618, MCA; IMP, 2-18-618, MCA; NEW, 1986 MAR p. 1297, Eff. 8/1/86.)

2.21.814 ELIGIBILITY TO RECEIVE GRANTS FROM THE SICK LEAVE FUND

(1) A participating employee who meets the eligibility requirements of this rule may receive no more than a maximum of 160 hours of sick leave fund grants in any continuous 12-month period. Leave approved for a part-time employee shall be prorated. The maximum allowable benefit in any 12-month period from either grants from the fund or direct grants is 160 hours.

(2) The 12-month period is calculated from the first day the employee takes sick leave which is a grant from the sick leave fund or a direct grant.

(3) No employee is eligible to receive a grant of sick leave from the sick leave fund without the approval of the agency head or designee.

(4) Participation in the sick leave fund or meeting the eligibility requirements of this rule does not guarantee that receipt of sick leave shall be approved in any specific case by the agency head.

(5) When approving leave of absence, a supervisor may approve a combination of paid sick leave and leave of absence without pay in a workweek, for example, 20 hours of paid sick leave and 20 hours of leave of absence without pay.

(6) To be eligible to receive a grant from the sick leave fund, an employee must:

(a) have met the 90-day qualifying period to take sick leave provided for in 2-18-618, MCA;

(b) suffer an extensive illness or accident which results in absence from work of no less than 10 consecutive working days;

(c) exhaust all personally accrued sick leave, annual leave, all other accrued paid leave, and compensatory time. Participation in the fund or agreeing to receive direct grants constitutes an employee's agreement required in 2-18-615, MCA, to exhaust all accrued annual vacation leave in order to become eligible to receive the additional sick leave;

(d) take 20 consecutive hours of leave of absence without pay following exhaustion of all accrued leave and compensatory time;

(e) receive approval from the supervisor for leave of absence;

(f) receive approval from the agency head or designee to receive a grant or direct grant of sick leave;

(g) provide to the employing agency a physician's certification of extensive illness or accident, in accordance with ARM 2.21.137, in the sick leave policy; and

(h) have been a member of the sick leave fund for 90 days.

(7) If an employee is incapacitated and unable to apply for leave of absence and a grant from the sick leave fund, another person may do so for the employee.

(8) Participation in the sick leave fund does not prohibit an agency from terminating an employee for continued incapacity to perform.

(9) An employee may request a grant from the sick leave fund, as provided in ARM 2.21.132, to provide "necessary care of or attendance to an immediate family member . . . until other attendance can reasonably be obtained." The employee must meet all eligibility requirements of this rule. (History: Sec. 2-18-604 and 2-18-618, MCA; IMP, 2-18-618, MCA; NEW, 1986 MAR p. 1297, Eff. 8/1/86; AMD, 1987 MAR p. 1202, Eff. 7/31/87; AMD, 1988 MAR p. 472, Eff. 3/11/88; AMD, 1999 MAR p. 53, Eff. 1/15/99.)

Rules 15 through 19 reserved

2.21.820 ADMINISTRATION OF A DIRECT GRANT (1) Employees do not have to be participating members in the sick leave fund in order to give or receive direct grants.

(2) Direct grants shall be made using a sick leave voucher. The agency shall certify that the granting employee has met the eligibility requirements to make a direct grant in ARM 2.21.821. The granting employee's sick leave balance shall be debited by the appropriate number of hours.

(3) A sick leave voucher shall be transmitted directly from the granting employee's agency to the recipient's agency.

(4) If the recipient of a direct grant has exceeded the maximum allowable benefit, or if the recipient's agency does not agree to accept the sick leave credits, the voucher shall be returned to the granting employee's agency and the sick leave shall be recredited to the granting employee's balance.

(5) A copy of the sick leave voucher shall be transmitted to the department of administration for record keeping purposes. (History: Sec. 2-18-618, MCA; IMP, 2-18-618, MCA; NEW, 1986 MAR p. 1297, Eff. 8/1/86.)

2.21.821 ELIGIBILITY TO MAKE DIRECT GRANT (1) To be eligible to make a direct grant of sick leave, an employee shall have completed the 90-day qualifying period to take sick leave, provided for in 2-18-618, MCA, and shall have a minimum balance of 40 hours of accrued sick leave remaining in the employee's account, following the contribution. The minimum balance for a part-time employee shall be prorated.

(2) An employee may directly grant a maximum of 40 hours of accrued personal sick leave in any continuous 12-month period to another employee or employees. An employee may contribute no more than a combined total of 40 hours of sick leave to either the sick leave fund or as direct grants in any 12-month period.

The 12-month period is calculated from the first day an employee makes a direct grant or contribution to the sick leave fund. If the employee's leave balance falls below 40 hours, the employee will not be eligible to make a direct grant. The employee may not reduce the leave balance below 40 hours by making direct grants.

(3) At the time of termination, there is no limit on the amount of sick leave an employee may contribute as direct grants, up to the maximum allowable benefit per employee. The recipient employee must be eligible to receive direct grants in the same pay period in which the donor employee terminates.

(4) An employee may make a direct grant of sick leave to an employee of any state agency. (History: Sec. 2-18-604 and 2-18-618, MCA; IMP, 2-18-618, MCA; NEW, 1986 MAR p. 1297, Eff. 8/1/86; AMD, 1987 MAR p. 1202, Eff. 7/31/87; AMD, 1999 MAR p. 53, Eff. 1/15/99.)

2.21.822 ELIGIBILITY TO RECEIVE DIRECT GRANTS (1) An employee may receive no more than a maximum of 160 hours of sick leave in any continuous 12-month period in direct grants. Leave granted to a part-time employee shall be prorated. The maximum allowable benefit in any 12-month period from either direct grants or grants from the sick leave fund is 160 hours.

(2) The 12-month period is calculated from the first day the employee takes sick leave which is a direct grant or a grant from the sick leave fund.

(3) To be eligible to receive a direct grant of sick leave, an employee must:

(a) have met the 90-day qualifying period to take sick leave provided for in 2-18-618, MCA;

(b) suffer an extensive illness or accident which results in absence from work of no less than 10 consecutive working days;

(c) exhaust all personally accrued sick leave, annual leave, all other accrued paid leave, and compensatory time. Participation in the fund or agreeing to receive direct grants constitutes an employee's agreement required in 2-18-615, MCA, to exhaust all accrued annual vacation leave in order to become eligible to receive the additional sick leave;

(d) take 20 consecutive hours of leave of absence without pay following exhaustion of all accrued leave and compensatory time;

(e) receive approval from the supervisor for leave of absence;

(f) receive approval from the agency head or designee to receive a grant or a direct grant of sick leave;

(g) provide to the employing agency a physician's certification of extensive illness or accident, in accordance with ARM 2.21.137, in the sick leave policy.

(4) No employee is eligible to receive direct grants of sick leave without the approval of the agency head or designee.

(5) A supervisor may approve a combination of paid sick leave and leave of absence without pay in a workweek, as provided in ARM 2.21.814.

(6) If an employee is incapacitated and unable to apply for leave of absence and direct grants, another person may do so, as provided in ARM 2.21.814.

(7) An employee may receive a direct grant of sick leave, as provided in ARM 2.21.132, to provide "necessary care of or attendance to an immediate family member . . . until other attendance can reasonably be obtained." The employee must meet all eligibility requirements of this rule. (History: Sec. 2-18-604 and 2-18-618, MCA; IMP, 2-18-618, MCA; NEW, 1986 MAR p. 1297, Eff. 8/1/86; AMD, 1987 MAR p. 1202, Eff. 7/31/87; AMD, 1999 MAR p. 53, Eff. 1/15/99.)

Questions regarding the implementation of this policy should be referred to your department's personnel office. Your personnel officer will contact the State Personnel Division, Department of Administration if additional assistance is needed in interpretation of the policy.